

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

GONZALO LIRA-ZARAGOZA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. C 13-4069-MWB
(No. CR 12-4044-MWB)

**ORDER DISMISSING
PETITIONER'S SECTION 2255
MOTION**

I. INTRODUCTION AND FACTUAL BACKGROUND

On March 21, 2012, petitioner Gonzalo Lira-Zaragoza was charged by a one-count Indictment with illegally re-entering the United States after a prior deportation. He pleaded guilty to the charge and I sentenced him to 50 months. Defendant Lira-Zaragoza did not appeal his conviction or sentence.

Subsequently, pursuant to 28 U.S.C. § 2255, Lira-Zaragoza filed his *pro se* Motion To Vacate, Set Aside Or Correct Sentence. In his § 2255 motion, Lira-Zaragoza claimed that his trial counsel provided him with ineffective assistance in various ways. On June 27, 2013, I denied Lira-Zaragoza's Motion To Vacate, Set Aside Or Correct Sentence and denied him a certificate of appealability. Lira-Zaragoza did not appeal. Instead, on July 30, 2013, Lira-Zaragoza filed a second *pro se* Motion To Vacate, Set Aside Or Correct Sentence. In his motion, defendant Lira-Zaragoza indicated that he had not previously filed a § 2255 motion.

II. LEGAL ANALYSIS

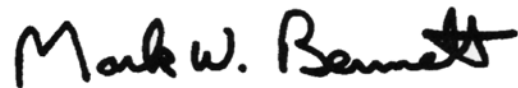
The prosecution has moved to dismiss Lira-Zaragoza's *pro se* Motion To Vacate, Set Aside Or Correct Sentence because it is a second or successive § 2255 petition which the Eighth Circuit Court of Appeals has not authorized to be filed (docket no. 3). Lira-Zaragoza has not filed a resistance to the prosecution's motion.

Section 2255 requires petitioners to seek approval from the court of appeals to file a second or successive petition. *See* 28 U.S.C. §§ 2244, 2255. I must dismiss for lack of subject matter jurisdiction any successive petition that is filed without the Eighth Circuit Court of Appeals's permission. *See Boykin v. United States*, No. 99-3369, 2000 WL 1619732, at *1 (8th Cir. Oct. 30, 2000) (unpublished decision).

Here, in his § 2255 motion, Lira-Zaragoza has bypassed the certification requirement. Because defendant Lira-Zaragoza failed to comply with the certification requirement, I lack the power and authority to entertain his motion. *Id.* I, therefore, grant the prosecution's motion to dismiss and dismiss Lira-Zaragoza's motion for lack of jurisdiction. *Id.*

IT IS SO ORDERED.

DATED this 24th day of January, 2014.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive, slightly stylized font.

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA